



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

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04 May 2023

Our ref: JB/ASebola/SCC-URC 46A

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED AMENDMENTS TO UNIFORM RULE 46A (EXECUTION—RESIDENTIAL IMMOVABLE PROPERTY)

The Rules Board for Courts of Law (Rules Board) has considered amending Uniform Rule 46A of the Uniform Rules (Execution against residential immovable property) for the reasons hereinafter indicated.

Arising out of the operation of the rule in practice and out of certain judgments, the Rules Board considered that the rule should be amended to:

- (a) provide for instances where the property sought to be executed against is residential but is owned by a judgment debtor which is an artificial entity (such as a trust or company), whereas a natural person has acquired the right to occupy the property as his/her primary residence and the section 26 Constitutional right to have adequate housing is implicated; and
- (b) to provide clarity on what a court should do where a reserve price which was set by the court has not been achieved at a sale in execution, as well as to provide the procedure for bringing the reconsideration of the reserve price back to court.

The amendments are proposed mainly to subrule (1) and subrule (9). The other amendments are ancillary and are intended to align with the main amendments.

Regarding subrule (1) and following upon the judgment in *P J Bestbier and Others v Nedbank Ltd* Case No. 150/2021 [2022] ZASCA 88, the Rules Board considered amending subrule (1) of Uniform Rule 46A so as to extend judicial oversight and protection to property other than residential immovable property where a natural person has acquired the right to occupy the property as his or her primary residence.

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985

Justice N Dambuza (Chairperson) | Justice N Mabindla-Boqwana (Vice Chairperson) | Adv L Haupt SC | Ms J Wessels | Adv M Sishuba | Mr G Bellairs | Mr T Thupaatlase | Ms N S Khanyile | Mr R R Titus | Mr V P Maluleke | Adv S Makoasha | Professor T Broodryk | Mr P Setati

Regarding subrule (9) and following upon the judgment in *Standard Bank of South Africa Ltd v V N Tchibamba and Another* 2022 (6) SA 571 (WCC), the Rules Board considered amending the subrule to provide clarity on what a court should do where a reserve price which was set by the court, has not been achieved at a sale in execution of the attached immovable property; and to provide the procedure for bringing the reconsideration of the reserve price before the court.

Uniform Rule 46A with the proposed amendments is attached for your consideration.

[ANNEXURE A]

As part of its rule-making and consultation process, the Rules Board invites your comments on the draft amendment proposed to Uniform Rule 46A (ANNEXURE A).

Your comments and inputs should be submitted to the Secretariat of the Rules Board by no later than 7 July 2023 and may be sent via hand delivery, post or email to:

Physical: 2nd Floor, Centre Walk East Tower, 266 Thabo Sehume (Andries) Street, Pretoria

Postal: P.O. Box 13106, The Tramshed, 0126

Email: AmSebola@justice.gov.za

The Rules Board looks forward to receiving your inputs (if any) and thanks you for same.

Yours sincerely,



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